UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In Re:

Eddy Vera and
Rachel Lorraine Vera,

Case No.: 6:16-bk-02976-CCJ
Chapter 7

Debtors.
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RESPONSE TO MOTION TO SELL NON – EXEMPT PROPERTY OF THE ESTATE AT PRIVATE SALE

Nationstar Mortgage LLC (the "Secured Creditor"), by and through its undersigned counsel, responds to the Motion to Sell Non-Exempt Property of the Estate at Private Sale (the "Motion") (Doc. No. 34) and in support thereof, Secured Creditor states as follows:

1. Debtors' Bankruptcy Case: This case was commenced by the filing of a voluntary Chapter 13 petition on May 3, 2016 by Eddy Vera and Rachel Lorraine Vera (the "Debtors").

2. Collateral: Secured Creditor holds a mortgage lien against the Debtors' property located at 381 Amberleaf Way, Simpsonville, South Carolina 29681 (the "Property").

3. Motion: The Chapter 7 Trustee is seeking to sell the Property to 381 Amberleaf Way Land Trust, CMP Capital Investments LLC as Trustee for $5,000.00 subject to all liens. The Motion discloses a lien held by the Secured Creditor in the amount of $ $203,074.00 (pursuant to the Debtor's bankruptcy petition). As this property is fully encumbered, administration, including the proposed sale by the Trustee should be precluded. *In re Feinstein Family Partnership, 247 B.R. 502, 507-509* (Bankr. M.D. Fl 2000).

4. Mortgage: In proceeding with the sale of the Property the Trustee has stepped into the shoes of the Debtor, and as such, the Trustee cannot transfer the estate's rights without

triggering the "Due on Sale" clause included in paragraph 18 of Secured Creditor's Mortgage. If the Trustee proceeds with the sale of the property, Secured Creditor will require immediate payment in full of all sums secured by the mortgage as required under paragraph 18 of the mortgage and as supported by 12 U.S.C.§1701j-3.

5. Secured Creditor's Request for Credit Bid: Per the Trustee's Motion this is a sale under 11 U.S.C. 363(b). 11 U.S.C. 363(k) states,

> "At the sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property."

Per the Trustee's Motion the Secured Creditor holds a lien in the amount of $203,074.00. The Secured Creditor is entitled to a credit bid on the property up to $203,074.00as the Trustee has shown no cause in the Motion why a credit bid should not be granted to the Secured Creditor.

6. Sale: If the sale is approved by the Court, the sale will place an undue burden on Secured Creditor. Alternatively, Secured Creditor requests that the Order Approving Sale includes a provision that the new purchaser may not hinder, delay or defend any current or future foreclosure action with regards to the Property.

7. Taxes: Secured Creditor objects to the Motion because it does not provide any information regarding requirement to pay real estate taxes and insurance.

8. Fresh Start: The selling of the Property will delay a fresh start to the Debtors because the Property will continue to be the subject of a delayed foreclosure action. Therefore, the delay will have a negative impact on the Debtors improving their credit worthiness after discharge.

9. Attorney's Fees and Costs: Secured Creditor has incurred additional fees and costs as a result of having to file this Response.

10. Response: Secured Creditor reserves the right to supplement and/or amend this Response.

WHEREFORE, the Secured Creditor requests that the Court enter an Order denying the Motion to Sell Non-Exempt Property of the Estate at Private Sale, and for such other and further relief as the Court deems just and proper.

MCCALLA RAYMER PIERC, LLC

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on August 30, 2016 to all parties on the list to receive e-mail notice/service for this case, via the Notice of Electronic Filing (which is incorporated herein by reference), and via U.S. Mail to Eddy Vera, 956 Paddington Ter, Lake Mary, FL 32746 and Rachel Lorraine Vera, 956 Paddington Ter, Lake Mary, FL 32746.

By: */s/Ashley Prager Popowitz*
Ashley Prager Popowitz

6:16-bk-02976-CCJ Notice will be electronically mailed to:

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